

PT 98-8

Tax Type: PROPERTY TAX

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**POLISH LEGION of
AMERICAN VETERANS,
APPLICANT**

v.

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE**

Docket No: 95-16-0272

**Real Estate Exemption
For 1995 Assessment Year**

P.I.N. 13-28-115-030

Cook County Parcel

**Robert C. Rymek
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

SYNOPSIS

This proceeding raises the issue of whether Cook County Parcel Index Number 13-28-115-030-000 (hereinafter the “subject parcel”) should be exempt from 1995 real estate taxes under Section 15-145 of the Property Tax Code which states:

“All property of veterans’ organizations used exclusively for charitable, patriotic and civic purposes is exempt [from real estate taxation].” 35 ILCS 200/15-145 (West 1996).

This controversy arose as follows:

On October 26, 1995, the Polish Legion of American Veterans U.S.A. Department of Illinois (hereinafter “PLAVIL”) filed a Property Tax Exemption Complaint with the Cook County Board of (Tax) Appeals. The Board reviewed

PLAVIL's complaint and on December 1, 1995, recommended that the exemption be denied. On May 2, 1996, the Illinois Department of Revenue (hereinafter the "Department") adopted the Board's recommendation and denied the exemption concluding that the property was not in exempt ownership or exempt use. PLAVIL filed a timely appeal from the Department's denial of exemption. On June 23, 1997, a formal administrative hearing was held at which evidence was presented. Following a careful review of all the evidence it is recommended that the subject parcel not be exempted from 1995 real estate taxes.

FINDINGS OF FACT

1. Dept. Gr. Ex. No. 1 establishes the Department's jurisdiction over this matter and its position that the subject parcel was not in exempt use or exempt ownership during 1995.
2. The Constitution of the Polish Legion of American Veterans USA (hereinafter "PLAVUSA") indicates that it was organized for the purposes of:
 - (a) upholding and defending the United States Constitution;
 - (b) encouraging patriotism;
 - (c) protecting the good names of American's of Polish ancestry; and
 - (d) maintaining and preserving "the true spirit of fraternity and patriotism arising from the sacrifices in the wars and conflicts of the United States of America and to perpetuate friendships and associations arising therefrom by mutual aid and cooperation in patriotic, charitable, educational, and civic activities.App. Ex. No. 2.
3. PLAVUSA is divided into three parts:

- a) The national department;
- b) individual state departments; and
- c) local posts.

Tr. p. 40.

- 4. PLAVIL is the Illinois department and is a not for profit organization which was incorporated in Illinois in 1995. App. Gr. Ex. No. 5;
- 5. PLAVUSA and PLAVIL are separate but closely related organizations governed by a single national constitution. PLAVIL abides by PLAVUSA's rules. The local posts abide by both PLAVUSA's rules and PLAVIL's rules. Tr. p. 40.
- 6. The articles of incorporation for both PLAVIL and PLAVUSA reveal that both corporations were organized "to aid and assist veterans and their families." App. Gr. Ex. No. 5;
- 7. PLAVUSA is the titled owner of the subject property via warranty deed dated November 2, 1964. App. Ex. 1.
- 8. PLAVIL filed the application for exemption. Dept Ex. No. 1.
- 9. PLAVIL paid the subject property's 1994 real estate taxes. App. Ex. Nos. 9, 10.
- 10. Although the subject property is owned by PLAVUSA, it is PLAVIL and the individual posts that use the subject property. The building is operated by PLAVIL, not the individual posts. Tr. p. 60; App. Ex. 1.
- 11. The subject property is located at 3024 N. Laramie Avenue, Chicago, IL 60641 and is improved with a 3600 square foot building. It is a one-story

building with a front hall which can hold approximately 125 people. Behind the front hall there is a kitchen area, a club bar, and a small meeting room or office. Tr. pp. 12-13.

12. The building is open only about 10 times a month and is used as a meeting place by various organizations including: PLAV Posts 1, 4, 72, and PLAVIL; AMVETS; Swakarus Polish National Alliance; Knights of Columbus; Austrians Club; and Wisconsin Club. App. Ex. 8; Tr. pp. 13, 55.
13. Occasionally, PLAVIL and the posts hold fundraising events at the building (dances, spaghetti dinners, bingo, raffles, etc.). The funds are given to a treasurer and then disbursed to support work in hospitals and to provide scholarships for blind students. Tr. pp. 13, 24-25.
14. PLAVIL also allows the building to be used for baby showers, birthday parties, and other such events in exchange for donations which are used to cover building expenses. Tr. p. 20.
15. The building is basically closed to non-members. Tr. p. 21.
16. To qualify for membership in PLAVUSA and PLAVIL one must have served in the armed forces of the United States and have received an honorable discharge. Tr. p. 23.
17. Members pay yearly dues of \$15. Of that \$15, \$6 goes to PLAVUSA, \$4 goes to PLAVIL and the remaining \$5 is retained by the individual posts. Most of the \$5 retained by the post is used for hospital work. Tr. pp. 23, 31, 35, 46.

18. Annual corned beef and cabbage dinners are held in the building. These dinners are open to the general public for a \$20 admission fee. Tr. p. 28.
19. Past commander and past president banquets are held in the building. Tr. p. 27
20. Annual socials are held at the building by PLAVIL's ladies auxiliary. Tr. p. 32.
21. PLAVIL's 1995 990-EZ form reveals PLAVIL had:
 - (a) total revenue of \$26,590; and
 - (b) total expenses of \$28,532 which included:
 - (1) \$10,624.54 for work at V.A. hospitals;
 - (2) \$5,000 used to aid blind students and their schools;
 - (3) \$2,290 in dram shop and liability insurance;
 - (4) \$2,223 in bar supplies;
 - (5) \$2,400 in electric bills;
 - (6) \$1,407 in natural gas bills.

App. Ex. Nos. 10, 11; Tr. p. 58.

CONCLUSIONS OF LAW

An examination of the record establishes that this applicant has not demonstrated by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant an exemption from property taxes for the 1994 assessment year. Accordingly, under the reasoning given below, the determination by the Department that the above-captioned parcel does not qualify for exemption should be affirmed. In support thereof, I make the following conclusions:

The applicant, PLAVIL, is seeking a property tax exemption under Section 15-145 of the Property Tax Code which provides:

“All property of veterans’ organizations used exclusively for charitable, patriotic and civic purposes is exempt.” 35 ILCS 200/15-145 (1996).

Thus, to be entitled to the property tax exemption, PLAVIL must show that: (1) the subject property was owned by a veteran’s organization; and (2) the subject property is used exclusively for charitable, patriotic and civic purposes. North Shore Post No. 21 of the American Legion v. Korzen, 38 Ill. 2d 231 (1967). As the applicant, PLAVIL bears the burden of proving the right to exemption and all debatable questions are resolved in favor of taxation. North Shore Post No. 21, supra.

Ownership by a Veteran’s Organization

PLAVUSA is the titled owner of the property. On the other hand, it is PLAVIL that uses, maintains, and otherwise exercises control over the subject property. Given these peculiar facts and the relatively unique relationship between PLAVUSA and PLAVIL, a question arises as to whether the true owner of the subject property is PLAVUSA or PLAVIL. See, generally, People v. Chicago Title & Trust Co, 75 Ill. 2d 479 (1979) (noting that courts must look beyond the mere holder of title to determine ownership). Determining ownership of property titled to one organization but used and controlled by another organization is a complex question that has repeatedly plagued the courts of this state. See Chicago Patrolmen's Association v. Department of Revenue, 171 Ill. 2d 263 (1996); Chicago Title supra; Christian Action Ministries v. Department of Local Government Affairs, 74 Ill. 2d 51 (1978); Coles-Cumberland Professional Development Corp. v. Department of Revenue, 284 Ill. App. 351 (1996); Community

Mental Health Council v. Department of Revenue, 186 Ill. App. 3d 73 (1989); Southern Illinois University Foundation v. Booker, 98 Ill. App. 3d 1062 (1981).

In the instant case, there was substantial evidence that both PLAVIL and PLAVUSA are veterans' organizations.¹ Thus, it is not necessary to resolve the question of whether the subject property is owned by PLAVIL or PLAVUSA since the ownership requirement of Section 15-145 is satisfied regardless of which entity is the owner. Since the ownership requirement of Section 15-145 has been satisfied, the next question that must be answered is whether the subject property was "used exclusively for charitable, patriotic and civic purposes." 35 ILCS 200/15-145 (1996). Use for Exclusively Charitable, Patriotic and Civic Purposes Section 15-145 requires that the subject property be "used exclusively for charitable, patriotic and civic purposes." (emphasis added.) 35 ILCS 200/15-145 (1996). The word "exclusively," when used in Section 15-145 and other tax exemption statutes means "the primary purpose for which property is used and not any secondary or incidental purpose." Gas Research Institute v. Department of Revenue, 145 Ill. App. 3d 430 (1987); Pontiac Lodge No. 294, A.F. & A.M. v. Department of Revenue, 243 Ill. App. 3d 186 (1993).

Here, the evidence establishes that the subject property was primarily used for organizational meetings and social events. App Ex. 8; Tr. pp. 13, 27, 32, 55. There was also testimony that the premises were used for baby showers, birthday parties, and other such events, in exchange for donations to cover building expenses. Tr. p. 20. It is well

¹ The members of both PLAVUSA and PLAVIL are veterans. Moreover, the articles of incorporation for both organizations reveal that they were each organized "to aid and assist veterans' and their families." App. Gr. Ex. No. 5.

established that Illinois courts consider such uses to be social rather than charitable. See, generally, North Shore Post No. 21, *supra*; Rodgers Park Post No 108 v. Brenza, 8 Ill. 2d 286 (1956). While there was evidence that the building was occasionally used for charitable activities (Tr. pp. 13, 24-25), such charitable use was not the primary use, but rather a secondary and incidental use, which is insufficient to justify an exemption. See Rodgers Park, *supra*.

For the reasons set forth above, I recommend that the subject parcel be denied exemption from 1995 real estate taxes.

Date

Robert C. Rymek
Administrative Law Judge